Hoye v. Gilmore et al

2016 | Cited 0 times | W.D. Virginia | June 20, 2016

CHARLES T. HOYE,

Pl aintiff, V. LT. GILM ORE, et al. ,

Defendant.

CLERK' S OFFI CE . U . 9 DI ST. GOURT

AT RQANQK;, VA ' . 1 FI LED I N THE UNITED STATES DISTRICT COURT 2 j 2gj s JUN FOR THE W ESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION Juul Ac. LER

BY:

DE E Ci vi l Action No. 7:15-cv-00203

MEM OM NDUM OPINION By: Hon. M ichael F. Urbansl d

Uni ted States Di stri ct Judge Pl ai nti ff Charl es T. Hoye, a Vi rgi ni a inmate proceedi ng pro K, commenced thi s ci vil act i on pl z r suant t o 42 U. S. C. j 1983. Pl ai nt i f f nnmes s t af f of t he Cof f eewood Corr ect i onal Cent er (ç 1 CCC' ') and Vi r gi ni a Depart ment of Cor r ect i ons ($ ç VDOC' ') as def endant s. Pl ai nt i f f ar gues i n t hi s ac t i on t hat hi s t r ansf er f r om CCC t o Deep Meadow Cor r ect i onal Cent er (C t DMCC' ') was ret ali atory and fnl strated the abil i ty of his chi ldren to visi t and coi nmunicat e wi th hi m. Defendants fi l ed a moti on t o di smi ss, and Plai nti ff responded wi t h a ç i moti on to nmendy ' ' aski ng t he court to consi der exhi bi ts in support of t he second nmended complai nt. Aft er consi dedng t he moti ons, t he court grants Plai nti ff' s mot ion to nmend i n part and grants Defendant s' moti on t o dlsml ss.

1. Pl ai nt iff, a Jewi sh i nmate sufferi ng from di abetes, was housed at CCC 9om hi s i ni ti al entry i nt o t he VDOC i n 2009 tmti l hi s transfer to DMCC on January 14, 2015. Whi l e at CCC i n August 2013, Pl ai nti ff began fi li ng admi ni st rati ve grievances t o compl ai n t hat t he VDOC' S Common Fare Menu di d not accommodate both hi s rel igi ous and medical needs. St aff r es ponded, advi si ng Pl ai nt i f ft o choose a di et t hat s at i sf i es ei t her l l i s medi cal needs (a non- Kos her di et) or hi s rel i gi ous needs (a s ugar y di et).

Unsatisfed, Pl ai nti ff commenced an act ion i n state court pursuant t o t he Vi rgi nia Decl ar at ory Judgment s Act , Vi rgi ni a Code j 8. 01-184. Ther eaft er, def endant s Gour di ne and

Mart i n ç ç immedi atel y suspended' ' Plai nti ff from t he Common Fare Menu, and CCC staff insti t uted an al legedl y fal se i nsti mti onal di sci pli nary action agai nst hi m.

I n Apr i l 2014, Pl ai nt i f f commenced a ci vi l act i on pur suant t o 42 U. S. C. j 1983 i n t hi s courq Hoye v. Clarke, No. 7:14-cv-00124, agai nst defendants Lt. Gi l more, Mart i n, Got l rdine and other st aff. ç t promptl y aft er servi ce of process' ' was ordered in that case, defendants Hi ll i an and Gourdi ne i nst nz cted CCC securi t y st affto prevent Pl ai nti ff from usi ng the prison' s 1 aw li brary. Accor di ngl y, Pl ai nt i f f sought t o joi n Hi l l i an as a def endant t o t he f ederal act i on and f i l ed a regul ar gri evance on January 7, 2015, to regai n access to t he 1 aw l i brary. Two days l ater on January 9, 2015, Defendant s all egedl y requested that Plai nti ffbe t ransferred from CCC to DMCC wi th t he speci ûc condi ti on Pl ainti ff never be al l owed t o return to CCC. Defendant Dawkins approved t he request the same day, and Plai nti ff was t ransferred 9om CCC to DMCC f ive days lat er on Jar mary 14, 2015.

Plai nti ff fi led an int bnnal compl ai nt, compl ai ni ng t hat the transfer was ret al iatory i n vi olation of VDOC pol i cies. Defendant Hil l ian repli ed, noti ng t he transfer was E l deemed necessary for the wel l bei ng of DOC. ' 'Defendant Lt. Gil more repl ied t o Pl ai nt ifps regular grievance, noti ng t he transfer was ç d necessary for t he orderl y operat ion of the faci li t y. ' ' Defendant Parks repl ied to Pl ai nt iffs gri evance appeal , stati ng t he transfer was G t for puposes of managi ng t he pri son population. ' '

Before the transfer t o DMCC, Plai nti ff s ex-wi fe was abl e to bri ng Plai nti ff' s young daughters from Fai rfax, Vi rgi ni a, to CCC every two months, and Pl aint i ff was able t o frequentl y cal l hi s daughters. Aft er t he t ransfer, however, vi si t ati on ç ç has become practical ly i mpossi bl e due t o t he di st ances' ' and t he i ncreased cost of l ong-dist ance phone charges adds to S ç his at l d t he chil dren' s sense of i sol ati on from each ot her and to t he detri ment of bot h. ' '

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Plai nti ff clai ms that Def endants ç ç unlawful l y al z d tort iousl y al ienated and depri ved' ' his daughters G ç of parental consort i um' ' wit h Pl ai nt iff The remai ning t wo clai ms al l ege t hat Defendants conspi red to cause, and di d cause, a retal iat ory t ransfer i n viol ati on of t he Fi rst Amendment of the Uni ted St ates Consti t uti on; Art icl e 1, secti on 12 of t he Vi rgi ni a Const i tut ion; and VDOC Operat ing Procedure 866. 1.

II. In response to Defendants' mot i on to di smiss, Pl ai nti ff fi led a S i motion for leave to nmend or , i n t he al t emat i ve, t o suppl ement t he second amended compl ai nt wi t h a reques t f orj udi ci al

' ' d a mot i on t o 5l e a r es pons e out of t i me. l Pl ai nt i f f acknowl edges not i ce of adj udi cat i ve fact s al l t hat t he pr oposed t hi r d amended compl ai nt does not add any caus e of act i on orj oi n a new part y. Inst ead, he merel y wishes t he court to consi der the proposed exhibi ts i n support of the compl ai nt and i n opposi ti on t o t he moti on t o dismi ss. Accordi ngl y, t he court grants the moti ons t o the ext ent i t wi l l cons i der t he exhi bi t s i n adj udi cat i ng t he mot i on t o di s mi ss.

111. The court must dismi ss an act ion or clai m sl ed by an i nmate if the court determi nes that the acti on or cl ai m is fri vol ous or fai ls to stat e a clai m on which rel ief may be granted. See 28 U. S. C. jj 1915(e) (2) , 1915A(b) (1) ; 42 U. S. C. j 1997e(c). The f i r s t s t andar d i ncl udes cl ai ms based upon ç ç al ' l i ndi sput abl y meri t less legal theory, ' ' ç ç cl ai ms of i nfringement of a l egal i nt erest whi ch cl earl y does not exi st, ' ' or cl ai ms where the ç t fact ual content ions are cl early baseless. ' ' Nei t zke v. Wi l l i nms , 490 U. S. 319, 327 (1989). The second s t andard i s t he fnmi l i ar s t andar d f or a mot i on t o di s mi ss under Feder al Rul e of Ci vi l Pr ocedl z r e 1 2(b)(6) , accept i ng a pl ai nt i f f s fact ual all egati ons as t rt ze. A complai nt needs 1 ç a short and pl ain stat ement of t he cl aim showi ng

1 Def endant s di d not oppose ei t her mot i on.

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t hat t he pl eader i s ent i t l ed t o rel i ef ' and s uf f i ci ent ç ç g t lac t ual al l egat i ons . . . t o r ai se a r i ght t o r el i ef above t he s pecul a t i ve l evel . . . . ' ' Bel l At l . Cop. v. Twombl y, 550 U. S. 544, 555 (2007) (i nt er nal quot at i on mar ks omi tt ed). A pl ai nt i f f' s bas i s f or r el i ef ç ç r equi res mor e t han l abel s and concl usi ons . . . . ' ' Id. Therefore, a plai ntiff must S ç al l ege facts suffici ent t o st ate a1 1 t he el ements

' ' 2 B E I Dupont de Nemours & Co

., 324 F. 3d 761 765 (4t h Ci r. 2003). of (t he) cl ai m. as s v. . . , To s t a t e a Fi r s t Amendment j 1983 r et al i at i on cl ai m, a pl ai nt i f f mus t est abl i sh t l l r ee el ement s: (1) t he pl ai nt i f fs r i ght t o speak was pr ot ect ed; (2) t he def endant' s al l eged re t al i at or y act i on adver sel y af f ect ed t he pl ai nt i f f s cons t i t ut i onal l y pr ot ect ed speech; and (3) a causal rel ati onshi p existed between t he pl ainti ffs speech and t he defendant's ret ali atory acti on. Suarez Com. I ndus. v. McGr aw, 202 F. 3d 676, 685- 86 (4t h Ci r. 2000) (ci t at i ons omi tt ed).

Fi li ng gri evances cnnnot form the basis of a ret al i ati on clai m i n t his ci rcui t because, pt z r suant t o Adnms v. Ri ce, 40 F. 3d 72, 75 (4t h Ci r. 1994), ç G t her e i s no cons t i t ut i onal r i ght t o

' ' 3 Furt hermore

, l ç there i s no consti t uti onal ri ght to pri son part i ci pate i n grievance proceedi ngs.

2 D t er mi ni ng whet her a compl ai nt st at es a pl ausi bl e cl ai m for rel i ef i s < $ a cont ext - speci f i c t ask t hat r equi res e t he r e vi e wi ng c our t t o dr a w on i t s j udi c i a l e xpe r i e nc e a nd common s e ns e. ' ' As hcr of t v. l gbal , 556 U. S. 662, 678- 79 (2009) . Thus , a c oul ' t s c r ee ni ng a c ompl a i n t unde r Rul e 1 2(b) (6) c a n i de nt i f y pl e adi ngs t ha t a r e not e nt i t l e d t o an assumpt i on of t nl t h because t hey consi s t of no mor e t han l abel s and concl usi ons. Id. Al t hough t he court l i beral l y const rues or o K compl ai nt s, Hai nes v. Kerner , 404 U. S. 519, 520- 2 1 (1972), t he com' t does not act as an i nmat e' s advocat e, sua spont e devel opi ng s t atut or y and cons t i tut i onal cl ai ms not cl ear l y rai sed i n' a compl ai nt . See Brock v. Carr ol l , 107 F. 3d 241, 243 (4t h Ci r. 1997) (Lut t i g, J. , concurri ng); Beaudet t v. Ci t v of Hamot on, 775 F. 2d 1 274, 1 278 (4t h Ci r . 1985) ; s ee a l s o Go r don v. Lee ke, 57 4 F. 2d 1 1 47, 1 1 51 (4t h Ci r . 1978) (r ec ogni z i ng t ha t a di s t r i c t court i s not expect ed t o assume t he rol e of advocat e for a pro K pl ai nti fg. .

3 S Booker v

. S. C. Dep' t of Cor r . 58 3 F. App' x 43 44 (4t h Ci r . 201 4) (unpubl i s he d) (r e ve r s i ng a pa nt of e e y , s umma r yj udgme nt o n a n i nma t e' s Fi r s t Ame ndmen t r e t al i at i on c l ai m whe r e t he i nma t e a l l e jed pr i s on of t ki al s ret al i at ed vi a a di sci pl i nar y charge f or hi s gri evance about mai l but , not abl y, off ered no opi nl on whet her t he i nmat e' s gri evance was prot ect ed speech); but see Wr i ght v. Vi t al e, No. 91- 7539, 1991 U. S. App. LEXIS 15230, at * 2, 1991 WL 1 27597, a t # l (4 t h Ci r . J ul y 1 6, 1 991) (unpubl i s hed) (i ndi ca t i ng t ha t a n i nmat e' s c l ai m a bout l os t vi si t at i on pri vi l eges i n ret al i at i on f or f i l i ng gr i evances S s coul d st at e a cons t i mt i onal cl ai m' ' (ci ti ng ot her appel l at e court s' opi ni ons l l; Gul l et v. Wi l t , No. 88- 6797, 1989 U. S. App. LEXIS 21 274, at *4- 5, 1989 WL 1 4614, at *2 (4t h Ci r. Feb. 21, 1989) (unpubl i shed) (not i ng an i nmat e' s Fi r st Amendment ri ght s were i mpl i cat ed by hi s ç i cl ai m t hat he i s bei ng t ransf er red (to anot her pri son) because pri son of fi ci al s are r et al i at i ng f or (hi sl numerous i ns ti t ut i onal pi evances , ' ' but concl uded t hat he di d not s t at e a cl ai m because t he pr i son had l egi t i mat e, non-r et al i at ory reasons f or t he t ransf er (ci ti ng ot her appel l at e court s' opi ni onsl) ; see al so Col l i ns v. Pond Creek Mi ni na Co. , 468 F. 3d 213, 219 (4t h Ci r. 2006) (recogni zi ng t hat unpubl i shed deci si on are not af for ded precedent i al val ue and G s are ent i tl ed onl y t o t he wei ght t hey generat e by t he per suasi veness of t hei r reasoni ngo); Hocan v. Cart er , 85 F. 3d 1 1 13, 1 1 18 (4t h Ci r .

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vi s i t at i on, ei t her f or pr i s oners or vi s i t or s. ' ' R i t e v. Kel l er , 438 F. Supp. 1 10, 1 15 (D. Md. 1977) , af fd, 588 F. 2d 913 (4t h Ci r . 1978) . Pl ai nt i f f acknowl edges he i s al l owed t o pay f or phone cal ls, and he does not have t he right to free or tmfett ered tel ephone use. Seee e. g. , Bez lzel v. Gr ammer , 869 F. 2d 1105, 1108 (8t h Ci r . 1989) .

Accordi ngl y, Defendants' moti on to di smi ss must be grant ed to t he extent Pl ai nti ffs presents a cl ai m of retal i ati on based on fil i ng admini strati ve gri evances, visi tati on, or ç û more expensi

ve' ' phone cal l s. However, t he court wi ll assume t he existence of the Grst el ement as to t he sl i ng of t he f eder al and s t at e l aws ui t s becaus e (ç l t l he sl i ng of a l awsui t cani es s i gni f i cant consti tuti onal protections, i mpl icati ng the Fi rst Amendment ri ght to pet i ti on t he government for redress of pievances, and t he ri ght of access t o court s. ' ' Am. Ci vil Li bert ies Ur l iom I nc. v. Wi comi co Cnt y. , 999 F. 2d 780, 785 (4t h Ci r . 1993) .

For t he second element, ç $ a pl ai nti ff suffers adverse act ion i f t he defendant' s al legedly r et al i at or y conduct woul d l i kel y det er a person of or di nar y f i rmness f r om t he exer ci s e of (t he pr ot ect edj r i ght s. ' ' Cons t ant i ne v. Rect or s & Vi si t or s of Geor ce Mason Uz l i v. , 41 1 F. 3d 474, 500 (4t h Ci r. 2005) (i nt er nal quot at i on mar ks and ci t at i ons omi t t ed). Thi s object i ve i nqui r y exnmi nes the speci fic facts of each case, tal dng i nto accot mt t he act ors i nvol ved and t hei r rel ati onsl li p. Bal t . Sun Co. v. Ehrl i ch, 437 F. 3d 410, 416 (4t h Ci r . 2006) . Because K ç conduct t hat t ends t o c hi l l the exercise of consti mti onal ri ghts mi ght not it self depdve such rights, . . . a plai nti ff need not acmal l y be deprived of . . . Fi rst Amendment rights i n order to establ ish Fi rst Amendment ret al i ati on. ' ' Nonethel ess, i x the plai nt iffs act ual response t o the retal iat ory conduct provides

1996) Cs si nce t mpubl i shed opi ni ons ar e not even regar ded as bi ndi ng pr ecedent i n ot l r ci rcui t , such opi ni ons cannot be c ons i de r ed i n de ci di ng whe t he r paMi c ul a r co nduc t vi ol a t ed cl ea r l y e s t a bl i s he d 1 aw f or pu r pos e s of a d j udgi ng ent i t l ement t o qual i f i ed i mmuni t y. n).

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some evi dence of t he t endency of t hat conduct to chi l l Fi rst Amendment act i vi t y. ' ' Constanti ne, 411 F. 3d at 500.

ç ç Not ever y (government j r est r i ct i on, ' ' however, G t i s s uf f i ci ent t o chi l l t he exercise of First Amendment rights, nor is every rest ri cti on actionabl e, even i f r et al i at ory. ' ' Di Megl i o v. Hai nes, 45 F. 3d 790, 806 (4t h Ci r. 1995). I l l ust r at i ng t he obs ervat i on t hat S i not ever y E gover nment j res t r i ct i on i s ' suf f i ci ent t o chi l l t he exercise of Fi rst Amendment rights, ' ' we have recognized a di st inct ion between an adver se i mpact t hat i s act i onabl e, on t he one hand, and a éq mi ni mi s i nconveni ence, on t he ot her. : 1 (A) pl ai nt i f f s eeki ng t o r ecover f or ret al i at i on mus t s how t hat t he def endant' s conduct r es ul t ed i n somet hi ng mor e t han a ç éq mini mi s i nconvenience' t o her exercise of Fi rst Amendment right s. ' ' Const ant i ne, 41 1 F. 3d at 500 (ci t at i on omi t t ed). Thus, i n Wi comi co Cot mt y, we hel d that a prison' s ç l decisi on to wi thdraw f ' rom i ts speci al = angement (penni t t i ng an ACLU par al egal t o meet wi t h pr i soner s i n pr i vat e) . . . may have i nconvenienced Appell ees, but i t di d not chil l , i mpai r, or deny their exercise of Fi rst Amendment rights' ' because the paral egal was sti l l G t f ree t o visit wi th i nmat es i n s ecur e, non- cont act meet i ng r ooms, ' ' whi ch was ç ç al l t hat g t he pr i s onj provided t o any paralegal or other non-professi onal vi si tor. ' ' 999 F. 2d at 786. In a proxi mat e vein, t he

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Supreme Court hms condoned l imi ti ng ret al i at i on li abil i ty when t he chal lenged government acti on, whether conduct or speech, is so pervasi ve, mundane, and t mi versal i n government operati ons that all owi ng a plai nti ff to proceed on his ret al i ati on cl aim would t û plant the seed of a consti t uti onal case' ' i n ç t vi rt uall y every' ' interchange. See Coz mick v. Myers, 461 U. S. 138, 148- 49 (1983); see al s o i i at 143 (hol di ng t hat , i n t he government empl oyment cont ext, publ i c empl oyers can repri mand or ptmi sh employees for thei r speech when that speech does not touch on mat t ers of publi c conce rn) ; Ki r by v. Ci t y of El i zabet h Ci t y, 388 F. 3d 440, 448- 49 (4t h Ci r. 2004); P . . f , Umbel m 518 U. S. at 675 (not i ng t hat re t al i at i on ç s may be j us t i f i ed g i . e. , t mact i onabl eq when l egi t i mat e cot mt ervai l i ng government i nt er es t s ar e s uf f i ci ent l y s t r onf). Thus, t he Conni ck Cour t recogni zed t hat t he r et al i at i on cause of act ion must be admi r l istered to balance gover nmental and privat e i nterests so as not to i mpose l iabi li ty i n everyday, nm-of-t he-mil l encol mt ers. I l l us t r at i ng t he . . . obser vat i on t hat not û G ever y r es t ri ct i on g i s j act i onabl e, even i f retali atory, ' ' we have recogni zed t hat some government acti ons, due t o t hei r nat ure, are not act ionable even i f t hey sati sfy al1 t he generall y art i culat ed elements of a retal iation cl ai m. Bal t. Stm Co. , 437 F. 3d at 416-17.

Plai nti ff fail s t o al l ege any burden whatsoever t o hi s abi li t y to access court s due t o t he transfer, and the court does not 5nd that a t ransfer f rom CCC t o DMCC would chi ll t he exercise of cons t i t ut i onal r i ght s of an obj ect i vel y r eas onabl e pl ai nt i f f. See Cons t ant i ne, 411 F. 3d at 500 (not i ng a pl ai nt i f f' s adual r es ponse t o t he ret al i a t or y conduct i s i ndi cat i ve of a chi l l t o t he pr ot ect ed act i vi t y) . Pl ai nt i f f was t rans fer r ed i n bet ween twr Secur i t y Level 2 f aci l i t i es , bot h of

' C nt ral Region. 4 Plai nti ff was not t ransferred to a more rest dcti ve which are wi thi n the VDOC s e l i vi ng envi ronment wi th fewer pri vil eges so as t o deter a person of ordi nary fi rmness f rom

5 The VDOC' S t ransfer of i nmates between comparable Vi rgi nia correct ional pursui ng li ti gati on . faci li t ies i n t he snme regi on is such a pervasi ve, mundane, and t mi versal practi ce i n i ts operati ons that al lowing Plai nti ff t o proceed on his pm i cular retal iat ion cl ai m woul d pl ant the seed of a consti tutional case i n vi rt ual ly every prison t ransf er bet ween comparable pri sons. Ft t rt hermore, Pl ai nt i f f cnnnot have aj us t i ûabl e expect at i on t ha t he woul d be i ncarcer at ed at CCC or any part i cul ar prison for the dt l rati on of his sentence. See. e. :. , Meachum v. Fano, 427 U. S. 215, 224 (1976); see al s o Ol i m v. Wal dnekona, 461 U. S. 238, 245 (1983) (i G Even when . . . t he t r ans f er i nvol ves l ong di stances and an ocean crossi ng, the confi nement remai ns wi t hin consti tutional

4 The court takes j udi ci al not i ce of t hese pr i sons' securi t y l evel s and l ocat i ons. COMMONWEALTH OF VI RGI NI A- DEPARTMENT OF CORRECTI ONS - FACI LI TI ES, he: / / vadoc. vi r gi ni a. gov/f aci l i t i es/ (l as t vi si t ed May 6, 20 1 6) ; s e e I n Re Kat r i na Cana l Br e ac he s Cons ol . Li t i c. , 533 E. Supp. 2d 61 5, 631 - 33 & M. 1 4- 1 5 (E. D. La. 2008) (col l e ct i ng c as e s i ndi ca t i ng t ha t f e der al co ur t s ma y t ake j udi ci a l not i c e of gove r n men t a l we bs i t e s)

; Wi l l i a ms v. Lo ng, 585 F. Supp. 2(1 679, 686- 88 & n. 4 (D. Md. 2008) (c ol l e c t i ng c as es i ndi c a t i ng t ha t pos t i ngs on gove r n me nt websi t es ar e i nherent l y aut hent i c or sel f - aut hent i cat i ng). The two pri sons ar e approxhnat el y sevent y mi l es apart , comparabl e t o t he di s t ance between Freder i cksbl z rg and Ri chmond, Vi rgi ni a.

5 I n Hi l l v.

Laopi n, 630 F. 3d 468, 475 (6t h Ci r. 2010) , t he Si xt h Ci r cui t Court of Appeal s not ed t hat a t ransf er t o a mor e- r es t ri ct i ve segr egat i on uni t coul d const i t ute t he adver se act i on to st at e a r etal i at i on cl ai m. However, Pl ai nt i f f does not al l ege s i mi l ar ci r cumst ances. I n Pasl ey v. Conerl v, No. 08-13 185, 2010 U. S. Di s t. LEXIS 104763, 2010 WL 3906120 (E. D. Mi ch. Sept . 10, 2010) , a magi st rat ejudge concl uded t hat an ç d adverse act i on' ' i ncl uded corr ect i onal st aff' s t hreat, i nt er al i a, t o kans fer an i nmat e âom a Mi chi gan pri son near Det roi t t o S ç f ar up Nor t h' ' away 9om hi s fami l y aAer t he i nmat e t hr eat ened t o f i l e a pi evance. The di s t ri ct court adopt ed t he r epor t a nd r e c omme nda t i on bec a us e i t bel i eve d s uc h a t hr e a t c oul d det e r a pe r s o n of or di na y f i r mnes s f r o m exerci si ng, i n t hat ci r cui t , t he cons t i mt i onal r i ght t o f i l e pri son pi evances. Id. , 2010 U. S. D1 s t. LEXIS 104697, 2010 WL 3894044 (E. D. Mi ch. Sept . 30, 2010) . However, Pasl ev i s not precedent i al i n t hi s ci r cui t , and opi ni ons i ss ued f rom ot her ci r cui t s do not det ermi ne cl earl y est abl i shed l aw f or qual i f i ed i mmuni t y i n t he Fourt h Ci rcui t . Edwar ds v. Ci t y of Gol ds bor o, 1 78 F. 3d 231 , 251 (4 t h Ci r . 1 999) .

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l i mi ts. The di fference between such a t ransfer and an i ntrast ate or i nterst ate t ransfer of short er di st ance is a matt er of degree, not of ki nd, and Meachum inst mcts t hat ç t he determi ni ng factor is t he na t ur e of t he i nt er es t i nvol ved r at her t han i t s wei ght. ' ').

Moreover , Pl ai ni i f f has descr i bed onl y a X mi ni mi s i nconveni ence t o hi s and l l i s chi l dr ens' abi l i t y t o meet or communi cat e. See Cons t ant i ne, 411 F. 3d a t 500 (not i ng a pl ai nt i ff mus t i t s how t hat t he def endant' s conduct resul t ed i n somet hi ng mor e t han a # . . ç mi ni mi s i nconveni ence t o g anj exer ci s e of Fi rs t Amendment r i ghts ' ' (i nt er nal quot at i on mar ks omi t t edl). No stat e acti on prevents the Plai nti ff and his fnmi l y from communi cati ng or meeti ng; Pl ai ntiff may recei ve visi t ors and may pay for out bot md telephone cal ls. The fact i t takes sl ightl y l onger for t he chil dren to anive at DMCC or i t costs Plai nti ff more money to cal l are not suffici entl y ç û adverse' ' ci rcumstances t o pursue a retal i ati on clai m, even if he had a consti tt z tional ri ght to visi tati on or l ess expensi ve t el ephonç call s. Accordi ngly, Defendants' motion to di smiss must be granted for t hese clai ms.

lV. To t he ext ent Pl ainti ff al l eges that Defendant s vi olat ed the VDOC'S pol icies or procedures, a cl ai m t hat prison offki al s have not foll owed t hei r own i ndependent pol i ci es or procedures al so does not state a consti t uti onal cl ai m. See Uni ted St ates v. Caceres, 440 U. S. 741, 752- 55 (1978);

Ri cci o v. Cnt y. of Fai r f ax, 907 F. 2d 1459, 1469 (4t h Ci r. 1990) (hol di ng t hat i f state 1aw grants more procedural ri ghts t han t he Consti t uti on requi res, a state' s fai l ure to abide by t hat 1 aw i s not a f eder al due pr ocess i ss ue). The cout ' t decl i nes t o exer ci s e s uppl ement al juri sdi ct i on over any st at e- l aw cl ai m pt l rs uant t o 28 U. S. C. j 1367(c)(3).

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V. For the foregoi ng reasons, the court grant s Pl ai nti ffs moti on to amend in part and al so gr ant s Def endant s' mot i on t o di s mi ss. Pl ai nt i f fs mot i on f or a pr el i mi nar y i njt mct i on i s deni ed as moot.

ENTER: Th i s d a y o f J t me , 2 01 6 . / m ' . . '

Uni ted States Di stri ct Judge

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